

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:22-cv-00454

Daniel Elliston,
Petitioner,

v.

Sheriff, Henderson County,
Respondent.

ORDER

Petitioner Daniel Elliston, an inmate of the Henderson County Jail proceeding pro se, filed this petition for the writ of habeas corpus challenging the legality of his confinement. The case was referred to United States Magistrate Judge K. Nicole Mitchell. The magistrate judge issued a report recommending that the petition be dismissed without prejudice for failure to exhaust state remedies. A copy of this report was sent to petitioner at his last known address on December 15, 2022, but no objections have been received. The Fifth Circuit has explained that when a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420–21 and n.9 (5th Cir. 2019).

When there have been no timely objections to a magistrate judge's report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). Having reviewed the magistrate judge's report and being satisfied that it contains no clear error, the court accepts its findings and recommendation. Petitioner's claims are dismissed without prejudice for failure to exhaust state remedies.

So ordered by the court on January 26, 2023.

A handwritten signature in black ink, appearing to read "J. Campbell Barker", is written over a horizontal line.

J. CAMPBELL BARKER
United States District Judge